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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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IN RE: *
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TYCO INTERNATIONAL, LTD. * No. C.02-MD-1335-B
* October 27, 2008
* 10:08 a.m.
Multidistrict Securities *
Litigation *
*
* * * * *

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE PAUL J. BARBADORO

APPEARANCES:

For Tyco: Elizabeth F. Edwards, Esq.
Brian E. Pumphrey, Esq.
McGuire Woods

Edward A. Haffer, Esq.
Sheehan, Phinney, Bass & Green, PA

For Mr. Kozlowski: Robert N. Shwartz, Esq.
Jyotin Hamid, Esq.
Philip Fortino, Esq.
Debevoise & Plimpton

Richard B. McNamara, Esq.
Wiggin & Nourie

For NJ Plaintiffs: Michael P. O'Mullan, Esq.
Riker Danzig

For Karen Kozlowski: Laura L. Carroll, Esq.
Burns & Levinson

For Angela Kozlowski: R. James Steiner, Esq.
D'Amante, Couser, Steiner,
Pellerin, P.A.

For Texas Teachers
Retirement System: Blair A. Nicholas, Esq.
Bernstein, Litowitz, Berger
& Grossmann, LLP

For Federated
Mutual Funds: Thomas Skelton, Esq.
Lowey, Dannenberg

Court Reporter: Susan M. Bateman, CSR, RPR, CRR
Official Court Reporter
U.S. District Court
55 Pleasant Street
Concord, NH 03301
(603) 225-1453

1 P R O C E E D I N G S

2 THE CLERK: The Court has for consideration
3 this morning In Re: Tyco, case number 02-MD-1335-PB,
4 for a preliminary injunction hearing.

5 THE COURT: All right. What's the status of
6 this matter?

7 MS. EDWARDS: Good morning, your Honor. We
8 have an agreed order that we would like to tender to the
9 Court.

10 THE COURT: All right. I'm happy to hear
11 that. Hand it to the clerk, please. Is everyone
12 joining in this proposed order?

13 MS. EDWARDS: Your Honor, Tyco and Mr.
14 Kozlowski's counsel and -- New Jersey?

15 MR. O'MULLAN: Your Honor, Michael O'Mullan
16 for the New Jersey plaintiffs. I reviewed the order
17 this morning. I haven't had an opportunity to discuss
18 it with my client.

19 THE COURT: All right.

20 MR. NICHOLAS: Your Honor, it's Blair Nicolas
21 on behalf of Texas Teachers in the opt-out case. I
22 haven't had a chance to review the order so I would like
23 a chance to review it.

24 THE COURT: All right.

25 MR. SKELTON: This is Tom Skelton from Lowey,

1 Dannenberg on behalf of Federated. I have not seen it,
2 either, and would like the opportunity to review it, as
3 well.

4 THE COURT: All right.

5 MR. SHWARTZ: Your Honor, on behalf of Mr.
6 Kozlowski, as Ms. Edwards said, we do have this
7 negotiated comprise order that we reached actually over
8 the weekend and into this morning hours. I certainly
9 don't have a problem sharing it with counsel for any of
10 the opt-outs, but it does effect to basically dissolve
11 the TRO and the orders that your Honor issued
12 thereunder, vacate the findings of fact and rulings that
13 your Honor issued in connection with those orders and
14 replace those in their entirety with this preliminary
15 injunction, which is embodied in the document that Ms.
16 Edwards has handed out.

17 THE COURT: All right.

18 MS. CARROLL: Your Honor, Laura Carroll from
19 Burns & Levinson for Karen Kozlowski. I just got a copy
20 of the proposed preliminary injunction a few minutes
21 ago. I'm speed reading it. I would want an opportunity
22 to discuss the particular paragraphs that impact Karen
23 Kozlowski with her divorce counsel in Florida because it
24 proposes to do a number of things with respect to
25 selling the Boca Raton and Nantucket properties.

1 If one of the attorneys for either Mr.
2 Kozlowski or Tyco has it so it could be e-mailed, I
3 would be happy to send it to them immediately to look
4 over. I just don't want to do anything that's going to,
5 you know, impact what's happening in the divorce case,
6 you know, without -- you know, innocently, of course,
7 but I don't want to mess that up.

8 THE COURT: I understand the problem for
9 parties other than Mr. Kozlowski and Tyco. They were
10 principally involved in the negotiations. Other parties
11 only recently, if at all, have seen copies of the
12 proposed agreement so -- and I don't expect -- and I
13 don't think counsel can bind a client to agree to
14 something without having seen it or reviewed it so I
15 fully understand the positions that the other parties
16 are in.

17 Ms. Edwards, why don't you give me a summary
18 of the way you think this proposed order works, and then
19 we'll go from there.

20 MS. EDWARDS: Certainly, your Honor. What we
21 have agreed to is a general restraint on any sale,
22 encumbrance, transfer of any of Mr. Kozlowski's assets
23 with certain enumerated exceptions, which are set forth
24 in paragraph 5. Those include, for example, the CODA
25 judgment, attorney's fees, any payments to his first

1 wife, and then a group of expenses with an annual cap
2 for the first year that include, for example, personal
3 expenses of Mr. Kozlowski for food and clothing that he
4 is permitted to receive in prison, repair, maintenance
5 and things that need to be done to the Boca Raton and
6 Nantucket properties to put them on the market,
7 maintenance of those properties. Those sort of things
8 are set out in paragraph 5(e) subject to a cap of \$2
9 million.

10 Then if either the Boca Raton or Nantucket
11 property is subject to a contract of sale, Tyco and the
12 other defendants -- or plaintiffs, I guess, would
13 receive notice and an opportunity to object to that
14 sale, should they choose to do so, and if the sale is
15 consummated, a renegotiation of the cap -- that
16 \$2 million cap would occur.

17 For all of the other assets, we have
18 enumerated six of the largest assets that if Mr.
19 Kozlowski is going to sell over that asset, it requires
20 notice to Tyco and the other plaintiffs and an
21 opportunity to object.

22 For the rest of his assets, they remain
23 subject to the general restraint but he can, for
24 example, sell one asset to get cash to pay attorney's
25 fees without notice to us so he has some flexibility to

1 make the payments that are permitted under the order,
2 and any notice that is required of Tyco also is given to
3 the opt-out plaintiffs and the New Jersey plaintiffs,
4 and they have the same opportunity to object, although
5 this order and their objections would occur either in
6 this court or in the Southern District of New York when
7 the case is transferred back there so that Mr. Kozlowski
8 is not subject to objections to this order in a variety
9 of courts, and that, I believe, is, in essence, the
10 substance of the order.

11 If I've missed something, perhaps Mr.
12 Kozlowski's counsel could enhance what I've just said.

13 MR. SHWARTZ: No. Beyond what I've said
14 earlier, your Honor, and there are some other details
15 that Ms. Edwards I think understandably didn't dwell on.

16 THE COURT: A couple of questions first. Is
17 this -- are we in a trustee situation with Mr. Kozlowski
18 with respect to compliance, or is there any kind of
19 provision in there for ongoing monitoring of what is
20 actually occurring with respect to expenses?

21 MS. EDWARDS: Actually, that's one provision,
22 your Honor, that I omitted. Mr. Kozlowski will give us
23 updated financial information every six months so that
24 we will be able to, you know, see how things have moved.

25 THE COURT: And I guess you can answer this on

1 behalf of Mr. Kozlowski. How does this order affect Mr.
2 Kozlowski's obligations under the divorce agreement?
3 Are we in a situation where he's in some kind of
4 conflicted position with respect to his ability to
5 comply with both?

6 MR. SHWARTZ: We don't believe so, your Honor.
7 As your Honor knows, there are three judgments
8 outstanding against him -- two of them held by CODA and
9 Mr. Kozlowski's first wife -- expressly authorized all
10 payments can be made without dollar limitations to
11 satisfy those obligations.

12 With regards to his obligations under the more
13 recent divorce to Karen Kozlowski, this agreement
14 authorizes the expenditure of funds that Mr. Kozlowski
15 would be obligated to pay under that divorce decree to
16 fix up the properties to prepare them for sale, and he's
17 allowed under this agreement to market and sell those
18 properties subject to the notice when there's a sale of
19 contract to Tyco and the other plaintiffs to give them
20 an opportunity to object, if they find anything about
21 that contract objectionable or if they have a problem
22 with -- not the sale price but the disposition of the
23 proceeds, they could voice an objection there. Mr.
24 Kozlowski would be free to oppose any such objections,
25 and with regards to those two properties, the Boca and

1 the Nantucket properties that are specifically the
2 subject of division in the marital settlement, Karen
3 Kozlowski receives notice of any objections that Tyco or
4 the other plaintiffs might have.

5 So at the moment, in terms of his current
6 obligations, we don't believe that this in any way
7 prevents him from meeting those obligations. It leaves
8 open the possibility down the road -- when those
9 properties are actually under contract for sale -- that
10 conceivably Tyco or the other plaintiffs might resist or
11 oppose the disbursement of the proceeds from those sales
12 in keeping with the divorce decree.

13 THE COURT: And I assume at that point all
14 parties rights would be preserved with respect to their
15 ability to assert whatever positions they want to assert
16 concerning a challenge.

17 MR. SHWARTZ: That's right, your Honor.

18 THE COURT: All right. Counsel, you're
19 standing.

20 MS. CARROLL: Yes, your Honor. Again, for
21 Karen Kozlowski. My concern with this -- I don't know
22 if we would be asked to join in it -- is that the -- is
23 only -- as far as I know, not having conferred with
24 Florida counsel for Mrs. Kozlowski -- only with respect
25 to paragraph 6, which is the provision that says when

1 there's a purchase and basically a contract for sale
2 signed -- so you already have a buyer. You've already
3 negotiated the terms. You're already supposed to be
4 selling them the property. Then Tyco has an opportunity
5 to come in and say either, you know, I want to object.
6 I don't want the sale to go forward.

7 My concern with that is it suggests -- one, I
8 think that could seriously -- just from what I know of
9 real estate -- seriously impair the ability to sell
10 either property if you have that looming over a buyer
11 that, you know -- not just that they're dealing with
12 disbursement of the proceeds, but that they could enjoin
13 the entire sale.

14 I think that would really have a negative drag
15 on the ability to sell the property. You know, it's
16 like saying, I want to buy your house but this other
17 person has a right of first refusal. We all know that
18 could be problematic.

19 Secondly, it also suggests -- and this is
20 where Karen Kozlowski would disagree -- that this Court
21 has the ability to come in and redo the terms of the
22 marital settlement agreement.

23 THE COURT: I'm not seeking to redo the terms
24 of the marital settlement agreement. I'm seeking to
25 protect the equitable claims that Tyco has asserted and

1 others have asserted on which I have made a preliminary
2 determination that has a likelihood of success. I have
3 no interest in rewriting the terms of the divorce
4 decree, but your client has no right to assets that were
5 not Mr. Kozlowski's to begin with. You have no right to
6 have those assigned to your client.

7 I don't want to interfere with the divorce
8 decree in any way. To the contrary. I would like to
9 see everybody's interests addressed here to the extent
10 they can be addressed.

11 As to your first point, I think I have some
12 sympathy with the problem. I'm not sure -- the analogy
13 to a right of first refusal is perhaps a little strong.
14 I don't think it is as threatening to an ability to
15 affect the sale as a right of first refusal, but it is
16 certainly a drag on efforts to sell.

17 The problem is that I'm not sure what we could
18 do to adequately protect the plaintiffs that I have in
19 front of me short of doing something like that, and I do
20 think -- I mean you just disagree that I have the power
21 to do this. I understand. I think I do, and at least
22 until somebody -- another court overturns me, that's
23 pretty much the way it's going to be so I understand
24 that problem and I would certainly be willing to give
25 you some limited period of time to react to this, if you

1 feel you need to, and consider any objection you file,
2 but it would be something I would have to do on a
3 relatively expedited basis, and if you have those kinds
4 of concerns once you do have a chance to digest the
5 order and talk to your client, I think your first resort
6 ought to be to talk to Tyco and Kozlowski, and if you
7 can propose modest changes that they would agree to,
8 that's probably your greatest chance of succeeding.
9 Short of that, giving you some expedited period of time
10 in which to give me some kind of written submission
11 explaining specifically and narrowly what your concerns
12 are, I would certainly be willing to entertain that.

13 MS. CARROLL: Okay. I think that's what I
14 would like to do, your Honor, is for us to be able to
15 confer with Mrs. Kozlowski and her Florida divorce
16 attorneys, who I'm sure are much closer to the issue of
17 what's needed to do in terms of selling the Boca
18 property -- whether they think this would be a drag on
19 the proposed sale or not, and maybe there's -- if they
20 agree, maybe we can come up with an earlier mechanism
21 than having already signed -- a signed purchase and sale
22 agreement as the trigger, if nothing else, to figure out
23 some way if there's going to be a hold up of the sale
24 actually going through.

25 If I could confer with them today -- I will

1 certainly talk to counsel for Tyco and Mr. Kozlowski
2 today.

3 THE COURT: I can't bind you to agree to
4 anything with such short notice. I wouldn't try. The
5 TRO remains in effect for how long? I have another few
6 days.

7 MS. EDWARDS: Until October 31st, your Honor.

8 THE COURT: All right. So if I can say -- any
9 submission you make by the end of the day tomorrow, that
10 would give me a chance and give you a chance -- what's
11 the date today?

12 MS. EDWARDS: 27th.

13 THE COURT: The 27th. So if you had a problem
14 that you can't work out with Tyco, file something by the
15 end of the day tomorrow. Explain what it is. I'll
16 review it and make a decision on whether to consider
17 taking any different action other than what's being
18 proposed.

19 MS. CARROLL: Would it be possible, your
20 Honor, to have until Wednesday only because I know Jason
21 Marks, who is one of the lead divorce attorneys for Mrs.
22 Kozlowski, is out of town returning later today?

23 THE COURT: Okay. Just understand that the
24 shorter amount of time you give me to review whatever
25 you submit, the less likely I am to agree with your

1 position. My default position would not be to change my
2 mind so you would have to persuade me to move off of my
3 default position.

4 MS. CARROLL: If I could do that tomorrow? I
5 just know I'm not going to be able to talk to Mr. Marks
6 until late this afternoon, your Honor, and obviously he
7 has to review this before I can talk to them.

8 THE COURT: I understand. The same goes for
9 any of the other parties who haven't had a chance to
10 review this for any extended period. If you have some
11 problem that you haven't been able to work out, by the
12 end of the day on Wednesday file whatever. Otherwise
13 I'll take whatever action I'm going to take before the
14 TRO expires.

15 Another question I have, Ms. Edwards -- I'm
16 obviously going to read the document carefully. I won't
17 do it in your presence. I'll take it upstairs and read
18 it, but as you know, I am contemplating, subject to what
19 I hear later on in the telephone conference today, in
20 the relatively near future to -- seeking to have this
21 case transferred back to the transferor district for
22 final resolution, and I want to be sure -- ordinarily --
23 I think a Court has a need to try to protect its
24 rulings. I don't ordinarily agree with the idea of
25 vacating my own rulings to satisfy a proposed

1 settlement, but it's a very different matter when I rule
2 on something in a very preliminary way, as I have here.

3 I have no difficulty with the idea of vacating
4 earlier orders and substituting this. I also think
5 there would be little purpose served, if I do make a
6 transfer, having any further matter, such as
7 modification of the injunction, heard by me. It seems
8 to me appropriate, and I would have no objection to
9 whatever judge ended up handling the case to entertain
10 any further proposals to modify the injunction or to
11 respond to any requests for relief as a result of a
12 pending sale -- something like that.

13 So my view would be if I transferred this
14 thing, I should transfer everything and that the new
15 judge should have the power to make any modifications to
16 the order. How do you propose to deal with that in this
17 proposed order?

18 MS. EDWARDS: Your Honor, we have attempted in
19 paragraph 4 to provide that any objection would be filed
20 if the case was transferred back in the court to which
21 the case was transferred.

22 THE COURT: All right. Does anybody have any
23 problem with that concept? I just think whatever judge
24 ends up with it ought to have the full power to do
25 whatever is necessary to address any problems that may

1 arise, and there's no point in me trying to meddle in
2 something that I've agreed should be sent back to
3 another judge. Does anybody have any problem with that?

4 MR. O'MULLAN: Your Honor, Michael O'Mullan,
5 the New Jersey plaintiffs' attorney. I just wanted --
6 as I advised your Honor before, I haven't had a chance
7 to review this with my client. I did have a concern
8 about the possibility of the action being remanded to
9 the Southern District of New York. I wanted to make
10 sure that our rights would be protected in that, as
11 well, and in paragraph 11 you've added a procedure that
12 would give us and the other opt-out plaintiffs the
13 ability to have standing in that action and the right to
14 raise the same objection that Tyco has raised and we see
15 that as a --

16 THE COURT: Oh, I see the problem. You're
17 saying to the extent that I keep your case and send this
18 one back, that you need an opportunity to be heard in
19 that matter.

20 I assume no one would have any objection to
21 those rights being preserved, and I have no objection
22 to the judge with the primary control over what I've
23 been calling the Tyco plaintiff cases -- that that judge
24 should resolve any disputes that arise under the
25 preliminary injunction even if I did retain your case

1 while sending the Tyco case back. Does anybody have any
2 difficulty with that?

3 MR. SHWARTZ: No, your Honor, and we have
4 attempted, with input from Mr. O'Mullan this morning, to
5 capture that in the language of the proposed order
6 before your Honor.

7 The goal is that any issues related to this
8 preliminary injunction will stay with your Honor, or if
9 your Honor remands the individual actions back to the
10 transferor court, that court and the opt-outs in New
11 Jersey's interests in this preliminary injunction would
12 also be addressed by that court. We don't want to have
13 it scattered to multiple courts.

14 THE COURT: Exactly, and I think that's an
15 entirely sensible approach. As long as they have an
16 opportunity to be heard in that court, there's no reason
17 why they should bring it back to somewhere else or even
18 if I transferred your case back to New Jersey -- is that
19 where you filed it originally?

20 MR. O'MULLAN: That's right, and we're hopeful
21 that would happen soon, as well, your Honor.

22 THE COURT: We're going to talk about that
23 this afternoon. Okay. All right. I will review the
24 matter carefully. I will not act until after 5:00
25 o'clock on Wednesday, but I will have -- I have to say,

1 this is precisely what I was hoping the parties would
2 do, and it's why I really have such a high regard for
3 the lawyers in these cases because you're able to do
4 things that are sensible when you're pressed to do them,
5 and I really appreciate that.

6 I think what I like about this case -- as
7 difficult as it is -- is when I give you some suggestion
8 as to how I think the matter should proceed and it's
9 reasonable, you seem to be very good about taking a
10 practical approach to these problems, and that's what
11 they cry out for so I appreciate your efforts. I know
12 everybody did a lot of work and spent a lot of the
13 weekend working on it, and I appreciate that.

14 This is precisely what I had in mind, subject
15 to hearing any objections that I receive on Wednesday or
16 seeing something in the document that is not yet
17 apparent to me. I commend the parties, and I see no
18 reason why I wouldn't enter the proposed preliminary
19 injunction as the parties have suggested.

20 MR. NICHOLAS: Your Honor.

21 THE COURT: Yes.

22 MR. NICHOLAS: It's Blair Nicholas on behalf
23 of Texas Teachers -- I don't mean to interrupt you --
24 and we will review this and digest it quickly once we
25 receive the proposed order.

1 One thing we did not receive that I think
2 would be helpful with my clients digesting this is we
3 did not receive a proffer of Kozlowski's assets that
4 were provided to Tyco, and if we could have that
5 provided to us as part of the process, that would be
6 very helpful. I assume there's no objection to that.

7 THE COURT: Let me hear from the parties here.
8 Yes, Ms. Edwards.

9 MS. EDWARDS: Your Honor, I believe that those
10 interrogatories -- or those discovery responses were
11 attached as Exhibit 79 to my affidavit that we filed on
12 Friday.

13 MR. NICHOLAS: Was that filed under seal,
14 Elizabeth?

15 MS. EDWARDS: I believe it was, but I believe
16 it was also e-mailed to you, and if it was not, we
17 certainly can take care of that.

18 MR. NICHOLAS: Yes. Unfortunately, we didn't
19 get an e-mail, but if you could forward that to us, that
20 would be helpful.

21 MR. SKELTON: Tom Skelton on behalf of
22 Federated. We did not receive it, either.

23 THE COURT: All right. It was filed under
24 seal, apparently, and if you do get copies of it, you
25 should treat it like any other sealed document.

1 MR. SKELTON: Of course.

2 MR. NICHOLAS: Of course, and we're parties to
3 the confidentiality agreement.

4 THE COURT: All right.

5 MS. EDWARDS: We'll review that as soon as we
6 get Internet access and can do so.

7 MR. SHWARTZ: Your Honor, we have no objection
8 to any opt-out who has served a summons and complaint
9 and is bound by the confidentiality agreements in this
10 case, but I think in one instance among the seven
11 opt-outs, that may not be the case. If they are not a
12 party because they haven't commenced a lawsuit, that
13 puts them in a different posture.

14 THE COURT: Well, I certainly think that
15 anyone who is given access to a sealed document in this
16 case should be bound by whatever confidentiality
17 agreement the parties have negotiated.

18 With that caveat, Ms. Edwards will arrange to
19 have copies of it e-mailed to those who have signed the
20 confidentiality agreement.

21 MR. SKELTON: Thank you, your Honor.

22 MR. NICHOLAS: Thank you, your Honor.

23 THE COURT: All right. Anything else? All
24 right. Thank you very much, and I anticipated this
25 would be a longer hearing so you're going to probably

1 have to hang around to do the telephone conference. I
2 don't know. When is the telephone conference, 2:00?

3 MS. EDWARDS: 2:00 o'clock.

4 THE COURT: You probably can't get back to
5 wherever you're going. I apologize for that, but I
6 thought we might end up needing more time.

7 MR. SHWARTZ: We understand that your Honor
8 wants all parties to participate by phone at 2:00
9 o'clock.

10 THE COURT: Yes. I am going to -- at
11 least -- I haven't checked with my Clerk's Office.
12 There was a request from the media to participate in the
13 telephone conference, and that's not something that I
14 do, but since it is something -- I did it as a telephone
15 conference simply as a matter of convenience for the
16 parties so what I'm arranging to do is I will have a
17 speakerphone hook-up in the courtroom here for the
18 telephone conference, and I'll announce that at the
19 beginning of the telephone conference, but I'm not going
20 to be taking any communications from the courtroom.
21 It's simply to try to fulfill a demand for public access
22 to a proceeding, and there may be certain things that
23 people aren't going to be willing to say under those
24 circumstances. I fully understand that, and if we need
25 to have subsequent communications with various parties,

1 I can arrange for those to occur in a way that's not in
2 the public record, but I felt that at least for many of
3 the issues that I want to cover -- what's the status of
4 discovery; what's the status of motion practice; some
5 basics on what's happening with respect to settlement --
6 that there isn't any reason why that couldn't be in the
7 public record so I will have a speakerphone hook-up in
8 the courtroom, but you can go back to Mr. McNamara's
9 office and call in from there, or I mean you can try to
10 do it by cell phone if you're willing to take the risk
11 that you might get dropped or cut out or whatever you
12 want to do.

13 MR. SHWARTZ: We're going to see what the
14 airline schedules permit, but we're going to participate
15 by phone one way or the other.

16 THE COURT: Okay, and I'm sorry for the
17 inconvenience about that. I didn't see any other
18 practical way to resolve it. Yes.

19 MR. STEINER: Your Honor, Attorney Jim
20 Steiner. We had filed on Friday a partially assented to
21 motion to intervene on behalf of Angie Kozlowski, Mr.
22 Kozlowski's former spouse dating back to a divorce in
23 2000.

24 I just wanted to confirm, given the filing on
25 Friday -- and I apologize for my arrival a little later

1 this morning because of a conflict -- that counsel for
2 Angie Kozlowski will be participating in the telephone
3 conference. I'm not sure that there would have been any
4 objection to her intervention but --

5 THE COURT: I don't know. It might be kind of
6 boring for you. I'm not sure there's going to be much
7 in there that's really going to be of interest to your
8 client, particularly as proposed here. The parties are
9 agreeing that any obligations that are owed to your
10 client can be fully satisfied pursuant to the
11 preliminary injunction, but the clerk can give you the
12 call-in number and you can call in and participate but
13 I -- just giving -- the reality of the way these
14 conferences work, it's going to be -- Ms. Edwards knows
15 who is on the hot seat at these conferences, and it's
16 her and she's going to be doing most of the talking, and
17 to a lesser extent, some of the other players, but the
18 principal players will be really participating, and
19 everybody else is going to be listening in. I expect
20 that would be the case with your client. Any issue that
21 your client had we really ought to take up at this
22 proceeding because I want to be focusing on the main
23 cases.

24 I mean so there's no surprise about this, I
25 have scheduled oral argument on the remaining summary

1 judgment motions that I have pending in front of me. I
2 have tried to address this issue of the request for
3 preliminary injunction in the Tyco case, and what I want
4 to talk to people about is I want to confirm what I
5 believe to be the case, which is discovery is
6 substantially completed. I want to throw out my
7 proposal, which is going to be that these cases and the
8 Tycom case be sent back almost immediately, and that I
9 proceed with the remaining cases, try to get the opt-out
10 cases settled, try to deal with the New Jersey
11 plaintiffs' action against PricewaterhouseCoopers, try
12 to deal with the ERISA summary judgment motion and get
13 the rest of the cases out of here and get them working
14 in courts where judges are going to be giving a lot of
15 attention to them and getting them moving quickly
16 because I've taken as much time as I feel I could
17 reasonably take to encourage an active path to
18 settlement and it hasn't been moving as quickly as I
19 feel it needs to be moving, and so the next logical step
20 for me is to try to get the focus down to a few cases
21 where I think I could still get them resolved and get
22 the other ones back to districts where judges can
23 schedule summary judgment and trial in those cases
24 because it may be that only the scheduling of
25 dispositive motion dates and trial dates will get them

1 settled.

2 MR. STEINER: I'll be happy to take a look at
3 the proposed order and speak to Attorney Lenz in New
4 York.

5 THE COURT: And you're welcome to get a
6 dial-in number from the clerk.

7 MR. STEINER: I'll do that, your Honor. Thank
8 you.

9 MR. SHWARTZ: Your Honor, with regards to Mr.
10 Steiner's question, I think the applications to
11 intervene on behalf of both of the former Mrs.
12 Kozlowskis was with regards to the pending motion for a
13 TRO and preliminary injunction. Not with regards to the
14 overall pendency of the --

15 THE COURT: They are limited interventions --
16 limited to the purpose for which they are seeking
17 intervention, and there really isn't any need for them
18 to be actively involved in all phases of the case, but
19 I'll let them listen in if they want.

20 MR. SHWARTZ: I'll be happy to show Mr.
21 Steiner the proposed order that we handed up to your
22 Honor because I think that really fully addresses his
23 client's interests. Certainly that was the intent.

24 THE COURT: It sounds like it. If it's been
25 described correctly, she should not have any need to be

1 involved in the case further unless there's some
2 modification of the order that impairs any rights that
3 she has to assets of Mr. Kozlowski.

4 All right. Anything else? Okay. Then I will
5 conclude this conference, and I'll talk to everybody by
6 telephone again this afternoon.

7 (Conclusion of hearing at 10:40 a.m.)

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12 C E R T I F I C A T E

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14 I, Susan M. Bateman, do hereby certify that
15 the foregoing transcript is a true and accurate
16 transcription of the within proceedings, to the best of
17 my knowledge, skill, ability and belief.

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21 Submitted: 10-29-08 /s/ Susan M. Bateman
22 SUSAN M. BATEMAN, CSR, RPR, CRR

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